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No. 85-5189

Supreme Court, U.S.

FILED

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

LAMONT JULIUS McLAUGHLIN,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITIONER'S REPLY BRIEF

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In opposition to this Petition, the United States has made three points: (1) that 18 U.S.C. § 2113(a) makes it a crime to take property from a bank "by force and violence" while 18 U.S.C. § 2113(d) provides for additional punishment if a weapon is used, Memorandum for the United States in Opposition at 2-3; (2) that there is confusion but not conflict among the Circuit Courts of Appeals regarding the propriety of conviction under § 2113(d) in the face of government proof that a handgun used in perpetration of a bank robbery was, in fact, unloaded, *id.* at 3; and (3) that 18 U.S.C. § 2113(a) is simply designed to punish bank robberies committed without weapons while § 2113(d) is designed to punish bank robberies committed with dangerous weapons. *Id.* at 5.


The most cursory reading of 18 U.S.C. § 2113(a), (d), instructs the reader that § 2113(a) is designed to punish bank robberies committed without weapons while § 2113(d) punishes bank robberies committed with dangerous weapons. The distinction is between bank robberies committed without weapons and bank robberies committed with dangerous weapons. What the government would have this Court accept is the proposition that § 2113(d) punishes bank robberies committed with any weapon. Points (1) and (3) raised by the government in opposition to this Petition simply side-steps Petitioner's argument that when the government would prove a handgun used in a bank robbery is unloaded, it is not a "dangerous weapon" as envisioned by § 2113(d). (It may well be a handgun within the purview of 18 U.S.C. § 924(c) and use of it can be punished accordingly.)

That there is confusion but no conflict among the Circuits is a misleading characterization. The cases described by Petitioner, and described by the government in opposition, clearly indicate where the conflict among the Circuits is found. Most troubling to Petitioner is the government's suggestion that this Court need not review the issue presented because most bank robbers do not use unloaded guns to rob banks. Memorandum of the United States in Opposition at 3.

Thus, this Court should grant review in this case for at least two reasons: there is a conflict among the Circuits on the issue of whether an unloaded handgun constitutes a dangerous weapon under 18 U.S.C. § 2113(d) and it is simply unfair to convict someone of bank robbery by dangerous weapon when the weapon used was, in fact, not dangerous. This issue is highlighted by the fact there exist a separate statute, 18 U.S.C. § 924(c), that makes it a crime to commit a bank robbery with an unloaded handgun and provides for enhanced punishment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the attached Petitioner's Reply Brief mailed, first-class postage pre-paid, to Charles Fried, Esquire, Acting Solicitor General, Department of Justice, Washington, D.C. 20530, this 15th day of October, 1985.


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